UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/68/Add.1
5 December 1996

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 13 of the provisional agenda

IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Report of the United Nations seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination with particular reference to articles 4 and 6

(Geneva, 9-13 September 1996)

GE.96-14351 (E)

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 12	3
	A. Organization of seminar	1	3
	B. Participation	2 - 4	3
	C. Opening of the seminar and election of officers	5 - 9	3
	D. Agenda	10	4
	E. Documentation	11 - 12	5
II.	GLOBAL ASSESSMENT OF THE IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION	13 - 32	6
III.	IMPLEMENTATION OF ARTICLES 4 AND 6: LIMITS AND PERSPECTIVES	33 - 57	10
IV.	RACIST AND XENOPHOBIC PROPAGANDA THROUGH COMPUTER AND ELECTRONIC NETWORKS: MEASURES TO BE TAKEN AT THE NATIONAL AND INTERNATIONAL LEVELS	58 - 71	15
V.	EFFECTS OF RESERVATIONS TO ARTICLE 4 ON THE FIGHT AGAINST RACISM AND RACIAL DISCRIMINATION	72 - 100	18
VI.	EFFECTIVENESS OF RECOURSE PROCEDURES AVAILABLE TO VICTIMS OF RACISM AND RACIAL DISCRIMINATION	101 - 120	24
VII.	CONCLUSIONS AND RECOMMENDATIONS	121 - 123	27
VIII.	CLOSING SESSION	124 - 126	27

Annexes

I.	List of participants	29
II.	Conclusions and recommendations adopted by the seminar	32
III.	Concluding remarks by the Chairperson, Mrs. Vera Gowland-Debbas	35

I. INTRODUCTION

A. Organization of the seminar

1. Following the adoption of General Assembly resolution 48/91 of 20 December 1993, proclaiming the Third Decade to Combat Racism and Racial Discrimination and adopting a programme of action for the Decade, and resolution 49/146 of 23 December 1994, in which the Assembly approved the Revised Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (1993-2003), the Centre for Human Rights organized a seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, with particular reference to articles 4 and 6. The purpose of the seminar was to consider the obstacles to the effective implementation of the Convention and to propose ways to overcome them. With particular reference to article 4, participants were invited to look into the difficulties which prevented the adoption of measures aiming at the elimination of all forms of incitement to racial hatred and discrimination and the organizations involved in such activities. Under article 6, they considered the effectiveness of legislation and recourse procedures available to victims of racism and racial discrimination.

B. Participation

2. The following experts were invited to prepare background papers and to participate in the seminar by introducing their topics and leading the ensuing discussions: Mrs. Vera Gowlland-Debbas, Acting Professor, Graduate Institute of International Studies, Geneva, Switzerland; Mr. Iouri A. Rechetov, member of the Committee on the Elimination of Racial Discrimination (CERD); Mr. Luis Valencia Rodríguez, member of CERD; Rabbi Abraham Cooper, Dean, Simon Wiesenthal Center, Los Angeles, United States of America; Mr. Gérard Fellous, Secretary-General, National Consultative Commission on Human Rights, France.

3. The following countries were invited to nominate experts to attend the seminar in their personal capacity: Angola, Argentina, Bolivia, Brazil, Canada, Croatia, Cuba, Ethiopia, France, Gabon, Greece, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Japan, Jordan, Kuwait, Malaysia, Mauritius, Mexico, Morocco, Norway, Pakistan, Poland, Russian Federation, Senegal, Slovakia, South Africa, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, United Kingdom of Great Britain and Northern Ireland, Viet Nam, Zambia.

4. Representatives of intergovernmental and non-governmental organizations also took part, along with representatives of human rights institutes and other organizations. The list of participants is given in annex I.

C. Opening of the seminar and election of officers

5. The seminar was opened on behalf of the Secretary-General by the United Nations High Commissioner for Human Rights, Mr. José Ayala-Lasso. In his opening statement the High Commissioner said: "The era that we see drawing to a close is a paradoxical one. For, while communications, the mass media and technological progress are bringing people closer together, if not

physically then at least visually and mentally, at the same time we are witnessing a resurgence of intolerance, xenophobia, racism, racial discrimination and ethnic conflicts across the five continents. Immigrants, refugees, ethnic, racial and religious minorities and indigenous peoples are seeing their fundamental rights flouted by individuals and institutions whose only yardsticks are racism and xenophobia or, in their milder form, national preference. Others have no hesitation in resorting to violence in order to demonstrate their refusal to coexist with members of communities different from their own. Thus, in recent years in Europe and America there have been arson and bomb attacks on homes for refugees, hostels for immigrant workers, churches, mosques and synagogues, and cases of the desecration of cemeteries."

6. He also referred to situations in Africa and Central Europe by stressing that "ethnic and nationalistic hatred - which, in the last analysis, share with racism a radical negation of otherness in favour of sublimation of the superiority of the group that disseminates them - have attained their most extreme form in the policy of 'ethnic cleansing' and the genocide in Rwanda, with their funeral processions of innocent victims".

7. He then noted that "in several countries, regular participation in political life by organizations that advocate racism and xenophobia, to the extent of rendering those ideologies commonplace and encouraging the adoption of laws undermining the status of migrant workers and immigrants, demands an urgent response on our part".

8. Finally, the High Commissioner called the attention of the participants to the "dissemination of racist, xenophobic and anti-Semitic messages through worldwide computer networks such as the Internet, providing evidence, if any was needed, of the re-emergence of the hydra of racism on a global scale".

9. The seminar elected by acclamation the following officers:

Chairperson: Mrs. Vera Gowlland-Debbas

Vice-Chairperson: Mr. Luis Valencia Rodríguez

Rapporteur: Mr. Gérard Fellous.

D. Agenda

10. At its 1st meeting, on 9 September 1996, the seminar adopted the following agenda:

1. Global assessment of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

2. Implementation of articles 4 and 6: limits and perspectives

3. Racist and xenophobic propaganda through computer and electronic networks: measures to be taken at the national and international levels

4. Effects of reservations to article 4 on the fight against racism and racial discrimination

5. Effectiveness of recourse procedures available to victims of racism and racial discrimination

6. Conclusions and recommendations

7. Adoption of the report.

E. Documentation

11. The following background papers were prepared for the seminar at the request of the Centre for Human Rights:

HR/GENEVA/1996/SEM.1/BP.1	Background paper prepared by Mr. Iouri A. Rechetov
HR/GENEVA/1996/SEM.1/BP.2	Background paper prepared by Mr. Luis Valencia-Rodríguez
HR/GENEVA/1996/SEM.1/BP.3	Background paper prepared by Rabbi Abraham Cooper
HR/GENEVA/1996/SEM.1/BP.4	Background paper prepared by Mrs. Vera Gowland-Debbas
HR/GENEVA/1996/SEM.1/BP.5	Background paper prepared by Mr. Gérard Fellous

12. Working papers were also prepared by several participants and organizations. They were the following:

HR/GENEVA/1996/SEM.1/WP.1	Incitement to racial hatred through computer networks. The present situation in Australia by Ms. Zita Antonios, Race Discrimination Commissioner, Australian Human Rights and Equal Opportunity Commission
HR/GENEVA/1996/SEM.1/WP.2	The Web of Hate. Extremists exploit the Internet by the Anti-Defamation League
HR/GENEVA/1996/SEM.1/WP.3	Hate Group recruitment on the Internet by the Anti-Defamation League
HR/GENEVA/1996/SEM.1/WP.4	Use of modern technology to disseminate racist ideas. A case in Japan
HR/GENEVA/1996/SEM.1/WP.5	Anti-Semitism on the Internet. Abstract from Anti-Semitism Worldwide 1995/96 by Tel Aviv University

HR/GENEVA/1996/SEM.1/WP.6 Some problems concerning the implementation of articles 4 and 6 of the Internationaal Convention on the Elimination of All Forms of Racial Discrimination with particular reference to Finland by Mr. Juhani Kortteinen, Finnish League for Human Rights

II. GLOBAL ASSESSMENT OF THE IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

13. This item was considered during working session I on 9 September. It was introduced by Mr. Iouri Rechetov.

14. Mr. Rechetov discussed several issues including the purposes of the Convention, the impact of the new international scene on the implementation of the Convention, the procedure for implementing the Convention, the submission of reports by States parties and the discharge of their obligation under the Convention, complaints from States, individuals or groups of individuals and the prevention of racial discrimination.

15. He observed that the Convention had been drafted in the context of the struggle against colonialism, segregation and racial discrimination of which apartheid constituted the most glaring example. In the new historical context, the concept of the right to self-determination had grown in scope. During the period of the struggle against colonialism the right to self-determination was viewed almost exclusively or predominantly in the light of the need to end colonialism and promote the creation of newly independent States. In recent times, the problem had increasingly been seen in international organizations in terms of a desire to put an end to the destabilizing effect of ethnic problems and at the same time to respect for the territorial integrity and political independence of States. All the same, migratory movements and the related problem of xenophobia were increasingly impinging on the sphere of operation of the Convention.

16. In an overview of the impact of the work of the Committee during the past 20 years, Mr. Rechetov noted that many countries had included or were including in their national constitutions and laws provisions prohibiting racial discrimination and had revised or were revising legal provisions which were at variance with the Convention, pursuant to the Committee's recommendations. Legal, administrative and other guarantees against racial discrimination had been strengthened; educational curricula were being amended accordingly and new institutions dealing with racial discrimination and the protection of the interests of indigenous populations were being established. The Committee was consulted on planned changes in legislation or administrative practice. A climate of trust had been established between the Committee and States parties which now, as a general rule, gave serious consideration to the Committee's recommendations and requests.

17. At the same time, a number of fundamental difficulties in the implementation of the Convention had come to light in the course of the Committee's activities. Such difficulties arose from the late submission or

non-submission by States parties of their periodic reports under article 9 of the Convention and shortcomings in the contents of the reports. Other difficulties related to the reservations and declarations made by certain States parties on articles of the Convention, the failure of States parties to use the complaints procedure under the Convention to control human rights violations and the reluctance of States parties to make the declaration under article 14 recognizing the competence of the Committee to receive complaints from individuals or groups of individuals.

18. Mr. Rechetov furthermore noted that the Committee's work had been made more complicated by the fact that there were times when individual States sought to be both judges of and parties to the same case. Some States also tried to judge situations in other countries while denying the existence of serious problems at home. That issue was often used for political purposes, which was detrimental to a sound international human rights order and international stability. Such a situation could be reversed if individual States recognized the role of the international community, since the majority of States had ratified the Convention and had consequently transferred the appropriate powers to CERD.

19. The main issue of the efficacy of the Convention could only be tested by States parties' policies and actions. Such an assessment should be based on genuine legal criteria, as established in the Convention. In this respect he underlined three important relationships.

20. Firstly, between the States and the Committee: States had to discontinue their practice of failing to carry out their obligations under the Convention by denying the existence of serious problems or merely presenting information on their constitution or legislation rather than the actual situation in the countries and the efforts being made to improve it. States parties should consider the Committee's decisions, especially those not in line with their expectations, as reflecting the judgement of the international community and should therefore take them seriously. The Committee's evaluation should be seen as decisive for the image of the State in question and should supersede national self-judgement where racial and ethnic issues were concerned, since racism and ethnic conflicts constituted an essential component of the overall human rights equation.

21. Secondly, the relationship between States parties and their own citizens and population: citizens and other members of the population, including national or ethnic minorities should not only be well informed about the obligations of their State vis-à-vis the international community, but must also be involved in deliberations on the implementation of those obligations. Ways and means had to be found to ensure the participation of national and ethnic minorities in preparing national reports and presenting them to the Committee. A new relationship between the States and the Committee had to be built up which would permit representatives of indigenous populations and ethnic minorities and non-governmental organizations to be included among the members of the delegations presenting national reports.

22. Thirdly, the relationship between the States themselves: instead of waging propaganda wars and in some cases even resorting to economic coercion and the use of military force to deal with ethnic tensions and situations

involving minorities in other countries, States should rely on the legal means provided by international human rights instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, which contained a provision allowing States to make a complaint when they were not satisfied with the performance of another State in matters covered by the Convention. Only such ways and means could provide a sound basis for international legal order and rule of law in this most important field of international protection of human rights.

23. Mr. Rechetov also focused on recent developments in the work of the Committee which aimed at preventing racial discrimination. According to the Committee, efforts to prevent serious violations of the Convention might include the following:

(a) Early-warning measures. These would be aimed at preventing existing problems from escalating into conflicts and might also include confidence-building measures to identify and support structures to strengthen racial tolerance and consolidate peace in order to prevent a relapse into conflict where it had occurred. In that connection, early-warning factors could include: a lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, as provided for in the Convention; inadequate implementation of the Convention or inadequate enforcement mechanisms, including a lack of recourse procedures; the presence of a pattern of escalating racial hatred and violence or racist propaganda or appeals to racial intolerance by persons, groups or organizations, in particular by elected or other officials; a significant pattern of racial discrimination evidenced in social and economic indicators; and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities;

(b) Urgent procedures. These would be aimed at responding to problems requiring immediate attention in order to prevent or limit the scale or number of serious violations of the Convention. Possible criteria for initiating an urgent procedure could include the presence of a serious, massive or persistent pattern of racial discrimination or of a situation that was serious and in which there was a risk of further racial discrimination.

24. In the discussion that followed, Mr. Rechetov was asked to explain in detail the origin, rationale and modus operandi of the early-warning measures and urgent procedures adopted by the Committee. He answered that the adoption of the new procedure of the Committee was a considerable shift in its methods of work. For many years, the Committee had focused mainly on the reports from States parties so that its major task was evaluating the situation in particular countries only on the basis of the reports without giving equally necessary consideration to current developments in the countries assessed, if the latter did not appear on the Committee's agenda. However, with the new international climate characterized by ongoing crises and conflicts, members of the Committee felt that it was urgent to address the current situations whether or not they had any connection with the reports submitted to the Committee.

25. In line with these procedures, the Committee had adopted several resolutions and decisions on the situations in Rwanda, Burundi and Yugoslavia.

In the view of Mr. Rechetov, the Committee should not duplicate the work of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It would be better for the Committee to concentrate on preventive actions such as the field mission which was undertaken by three members of the Committee to Yugoslavia to offer the good offices of the Committee to help promote dialogue between Albanians in Kosovo and the Government of the Federal Republic of Yugoslavia for peaceful solutions to issues concerning respect for human rights in Kosovo.

26. A participant raised the issue of the impact of cultural differences on the implementation of the Convention at the national level, resulting in reservations made by certain States parties and the diversity of legislation, for example, in the area of prohibition of incitement to racial hatred. Sometimes, the particularity of traditions made it difficult to determine what was discriminatory and what was not. In certain countries the discriminatory nature of the language used to describe the peculiarities and characteristics of representatives of different races might be difficult to assess.

27. Regarding the present international conception of the right to self-determination with respect to the guarantee of the territorial integrity or political unity of sovereign and independent States, concern was expressed about the case of people who had been promised self-determination but for some reason had not been able to exercise it. The position of the Committee on the Elimination of Racial Discrimination, which did not recognize a general right of peoples unilaterally to secede from States, accurately reflected the understanding of the international community as formulated in several international instruments, in particular, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. Thus, if a part of the population of a particular country wanted to change their status, there were three contexts in which this could be achieved: when the constitution established a right to self-determination; when all the parties concerned agreed to secession; and when that part of the population was denied the right to participate freely in the conduct of public affairs or if their civil and political as well as economic, social and cultural rights were denied.

28. It was pointed out that in spite of the fact that 21 States parties to the Convention had made the declaration under article 14 to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals within their jurisdiction claiming to be victims of racial discrimination, the Committee had received few such complaints. This is due partly to the fact that in some States which had accepted the optional procedure the majority of the population was not aware of the obligations incurred by their Government. In addition, most victims of racial discrimination were underprivileged people who lacked the necessary knowledge to understand the international mechanisms and the economic and social capacity to use those mechanisms. Particular efforts to inform the populations concerned about the availability of the international recourse procedure was essential to the work of the Committee.

29. Referring to the changing climate of international relations, a participant thought that the Convention should be revised and the methods of work of the Committee adjusted in order to ensure better protection of the

rights of immigrants and populations which, as a result of historical factors, found themselves in countries other than that of their ancestors, where they were discriminated against. It was stressed that the Convention, as a living instrument, was subject to evolution of interpretation. Outside formal amendment, the implementation of the Convention would gain from renewed interest and renewed emphasis on different aspects.

30. Participants were reminded that although religion was not included in the Convention as one of the grounds on which racial discrimination was prohibited, in one country this element had been added to the legislation which was adopted to implement the Convention. The Committee itself sometimes had to take into account religious aspects when they appeared to be part of a consistent trend of discrimination against some people.

31. In connection with the issue of non-compliance by some States parties with their reporting obligations under the Convention, it was proposed that the Committee should visit certain countries. That would ensure that non-governmental organizations had access to the Committee, that individuals would be in a better position to express their complaints and views, and that States would have to submit their reports to challenge the information collected by the Committee. It was mentioned that the Centre for Human Rights within the framework of its programme of advisory services and technical cooperation could assist Governments in preparing their reports so that they were in line with the guidelines and criteria established by the Committee. Difficulties encountered by federal States in compiling information from all parts of the country were also mentioned.

32. Several participants raised the problems posed to the fight against racial discriminitation by reservations made by several States parties to article 4 which requests States parties to adopt immediate and positive measures designed to eradicate all incitement to racial hatred. This issue was discussed further under item 4.

III. IMPLEMENTATION OF ARTICLES 4 AND 6: LIMITS AND PERSPECTIVES

33. This item was considered during working session II on 10 September.

34. Referring to the background paper which he had prepared for the seminar (HR/GENEVA/1996/SEM.1/BP.2), Mr. Valencia Rodríguez discussed the limits and perspectives of articles 4 and 6.

35. With regard to article 4, he stressed that it was a "key article" which in its wording reflected a compromise between the necessity to enact positive legislation to penalize both "incitement to discrimination" and the "dissemination of ideas based on racial superiority or hatred", and the need to protect the right to freedom of speech or assembly.

36. He underlined that the problem of implementation of the provisions of article 4 arose when the Committee found that, subsequent to its examination of reports, a number of States parties had not taken administrative, legislative, judicial or other measures to comply with the provisions of article 4 and, in particular, the commitment to adopt immediate and positive measures to eradicate all incitement to or acts of racial discrimination.

37. As expressed in several of its recommendations, the Committee was of the opinion that incorporating or transforming the Convention into the domestic law of the ratifying State without enacting the necessary legislation stipulated by article 4 was not sufficient for a full implementation of the article. Furthermore, full compliance with article 4 had been complicated by reservations to and declarations on, or interpretations of this article emanating from the apprehension that the freedoms of expression and of association could be jeopardized by its provisions. However, this was an extreme position. The Convention allowed for the fulfilment of the obligations contained in it "with due regard" to the fundamental human rights to freedom of expression, opinion and association.

38. The opinion of the Committee, shared by States parties, was that the rights to freedom of opinion, expression and association were not absolute, but subject to limitations. These limitations lay in the balance to be struck between the obligations deriving from article 4 and the protection of these fundamental freedoms because, as the Committee had stated, it could not have been the intention of the drafters of the Convention to enable States parties to construe the phrase safeguarding the human rights in question as cancelling the obligations relating to the prohibition of the racist activities concerned. Otherwise, there would have been no purpose whatsoever for the inclusion in the Convention of the articles laying down those obligations.

39. On various occasions, the Committee has considered the effect of the reservations, declarations and interpretations made by States parties with regard to the scope of article 4. It was noted that declarations or interpretations which did not constitute reservations had no legal effect under the Convention on the obligations of the State party. The Committee had also established that virtually all such reservations referred to the scope of article 4 with regard to freedom of expression and of assembly, a matter which was the subject of a specific pronouncement by the Committee. While recognizing the sovereign right of States to formulate such declarations or interpretations, the Committee had requested that States consider the possibility of withdrawing them, particularly those which constituted reservations and, as such, limited or restricted the application of article 4.

40. In concluding his analysis on article 4, Mr. Valencia Rodríguez stressed that unlike other articles of the Convention, article 4 did not have immediate effect. Independently of any incorporation or conversion of the Convention into national law, article 4 could be implemented if legal norms were promulgated in compliance with its provisions. This, he said, was a legal obligation assumed by States parties, even if they claimed that discrimination was unknown or that no racist organizations existed on their territory. Article 4 aimed at prevention rather than cure, and the assumption was that legal sanctions served as a deterrent against racism, racial discrimination and activities designed to promote or incite people to commit such acts.

41. He reiterated that the compulsory nature of article 4 could nevertheless not absolve States parties from complying with the obligation to promulgate the necessary domestic legislation to punish racial discrimination in the event of its occurrence. This obligation was accompanied by the duty to guarantee their effective implementation.

42. With regard to article 6, the expert stated that the importance attached to the article by the Committee was based on the fact that the principle of equality under the law could be effective only in so far as courts, tribunals and other State institutions also offered an effective guarantee against all acts of racial discrimination. On that basis, the Committee had carefully studied the reports of States parties in order to assess their compliance with the obligations assumed under article 6 of the Convention. As a result of that study, the Committee noted that:

(a) Prior to the entry into force of the Convention for each of them, a considerable number of States parties already had legal or administrative norms to implement article 6, although those norms were not necessarily adequate for the purpose in every case;

(b) After a careful review of their legislation, some States made the necessary changes to make it conform to the requirements of article 6;

(c) Other States, after becoming parties to the Convention, had enacted new laws or amended existing ones, a fact which did not imply that the previous laws had not been, in part, satisfactory. In many cases, the legal reforms or innovations had been prompted by the opinions and comments of the Committee;

(d) Where article 6, together with other provisions of the Convention, had been incorporated into domestic law, the Convention could be invoked directly in the national courts. The Committee had considered whether, despite this fact, the enactment of special legislation was required in certain cases. As a general rule, the Committee was of the opinion that legislative provisions in the State party must comply with article 6;

(e) Reservations to article 6 formulated by some States could constitute obstacles to direct, objective and effective implementation of its provisions. The Committee had requested those States to consider withdrawing those reservations.

43. In preparing their reports, States parties should bear in mind that article 6 offered a certain degree of flexibility in its implementation. In fact, depending on the specific characteristics of States, the implementation of this article could be reflected in conciliation or mediation mechanisms in the establishment of administrative organs for investigating governmental action, or within the responsibilities of the Attorney-General, the Ombudsman, etc. These mechanisms functioned in certain States parties without prejudice to other procedures. Sanctions varied in degree, ranging from verbal or written reprimands to the imposition of fines or terms of imprisonment. Conciliatory meetings could also be organized between the parties involved in a conflict. The important element was that article 6 required "effective" protection and remedies.

44. With regard to the flexibility of article 6, he noted that in many cases, and particularly when remedial action was accompanied by steps designed to educate or to promote understanding and tolerance in accordance with article 7 of the Convention, the work of administrative bodies or conciliation commissions was of particular importance.

45. Guidelines prepared by the Committee described in detail the type of information sought by the Committee under article 6. This included information on precedents with regard to the article, and the practice of other State organs in implementing its provisions.

46. While recognizing the discretionary powers of the courts and tribunals in imposing the penalties prescribed by domestic law for acts of racial discrimination, the Committee had often pointed out that the lightness of the penalties imposed in such cases, some of which had affected the fundamental right to life and physical integrity, was not commensurate with the seriousness of the offences.

47. In the general discussion which followed, a participant reflected on the relationship between article 6 and article 1, especially the exception provided in paragraph 2 of article 1 concerning non-nationals. He pointed out an apparent contradiction which could prevent non-nationals from having access to recourse procedures. In fact, some clarification was needed where migrant workers and foreigners were exposed to xenophobia and discrimination. Mr. Valencia Rodríguez explained that there was no contradiction between the provisions of articles 1 and 6; article 6 broadened the scope of the implementation of the Convention and, furthermore, was based on the principle of equality before the law. As a consequence non-nationals residing in a State party could have access to the tribunals and courts if they claimed to be victims of discrimination. Therefore, the legal restriction which a State party was allowed to make on the basis of article 1, paragraph 2, had no impact on the implementation of article 6.

48. Focusing on the issue of "burden of proof", participants noted that in many countries it was difficult for victims of racial discrimination to win cases in court because elements of proof were too demanding. In addition, most victims of racial discrimination could not obtain appropriate legal assistance owing to their weak economic and/or social conditions. It was suggested that administrative and judicial measures should be taken to alleviate the burden of proof for those victims. It was also felt that human rights NGOs could assist those victims during the legal process. In some countries the judiciary provided for legal assistance to victims, whereas in others the national institution for human rights offered this service.

49. It was pointed out that the question of the burden of proof was particularly problematic under the legal systems of certain countries in cases of incitement to racial hatred. In fact, it was often difficult to prove legally that racist literature and propaganda would necessarily have led to incitement to a racist act. The question of the burden of proof, according to the Convention, referred to the act itself, not to the consequences. What therefore constituted an act of incitement to racial hatred should be prohibited as such without further consideration as to its consequences.

50. In view of the fact that reservations to articles 4 and 6 had limited the scope of implementation of the Convention in some countries, a participant was interested to know the position of the Committee on the interpretations made on the implementation on article 4. Mr. Valencia Rodríguez specified that States parties as part of their sovereignty had discretionary power to interpret the Convention for its implementation at the national level. States

parties were the guardians of the Convention. The Committee also had the right to interpret the Convention in the exercise of its functions. The interpretation made by the Committee served its own purpose and functioning and did not bind States parties. On the other hand, States parties as guardians of the Convention could make interpretations which did bind them.

51. With regard to the question of the rights to freedom of opinion, expression and association, these could be restricted in accordance with the limitations and restrictions contained in the Universal Declaration of Human Rights. Furthermore, in conformity with the legal principle of interpretation by which a specific norm prevailed over a general norm, the provisions embodied in the Convention prevailed over the Universal Declaration of Human Rights.

52. In the course of the discussion on the issue of incitement to racial hatred, the attention of participants was drawn to the present work of the International Law Commission concerning international criminality and State responsibility. In this regard, the Commission had expressed the view that mass media and the courts were independent only within the framework of internal law but not independent in the context of international law. As a consequence, in the long run the State itself would be held accountable if domestic media or courts violated international obligations of given States.

53. It was emphasized that in spite of the fact that certain States parties had taken appropriate measures to implement the Convention and make recourse procedures available to victims of racism and racial discrimination, legislation had been ineffective because it did not make provision for the competent jurisdictions to act ex officio. The law required victims to take action. Since most of the victims had no means to lodge a complaint, the law could not be implemented. To render the law more effective, the competent jurisdiction should be endowed with the possibility to take action on its own motion in serious cases of racial discrimination. Furthermore, acts of racial discrimination should be open to penal as well as civil action. The Committee recommended to States parties that acts of racial discrimination falling under article 4 should be declared penal offences.

54. It was noted that under certain legal systems the fact that an act of racial discrimination was penalized did not mean that it would be brought to court automatically since the government prosecutor's office might decide that it was not necessary to take action. Under other legal systems such a precondition did not exist. The government prosecutor's office initiated a procedure as soon as it became aware of a case of racial discrimination.

55. Focusing on the role of the media, a participant referred to the Jersild v. Denmark case, in which a journalist who had invited members of a racist organization (the "Greenjackets") to appear on television, where they made racist and xenophobic statements, was condemned by the City Court of Copenhagen for contributing to public dissemination of racist statements. Mr. Jersild appealed to the European Court of Human Rights which, on 23 September 1994 pronounced a favourable verdict on the ground that his condemnation by the court in Denmark was disproportionate with regard to the purpose of article 10, paragraph 2, of the European Convention on Human Rights which specified the legal restrictions which could be made on the rights to

freedom of opinion and expression. In other words, the European Court considered that the intention of the claimant was to expose, analyse and explain issues that were of great public concern, not to incite to racial hatred. The issue raised the question of the responsibility of the media in the incitement to racial hatred and it was suggested that States should elaborate a code of conduct for the media in the framework of the fight against racism and racial discrimination.

56. Participants warned that the limits put on the right to freedom of expression could lead to a kind of censorship. At times censorship had had the negative effect of amplifying ethnic tensions. It might be better, with a view to releasing tensions, to let people express their animosity. Mr. Valencia Rodríguez specified that article 4 did not require States parties to take preventive measures of censorship, but rather to prohibit acts of incitement to racial discrimination.

57. It is well understood that the provisions of article 4 do not prohibit scientific or academic studies on the effects of racial discrimination; therefore, such studies do not constitute incitement to racial discrimination.

IV. RACIST AND XENOPHOBIC PROPAGANDA THROUGH COMPUTER AND ELECTRONIC NETWORKS: MEASURES TO BE TAKEN AT THE NATIONAL AND INTERNATIONAL LEVELS

58. This item was considered during working session III on 10 September. It was introduced by Rabbi Abraham Cooper.

59. In introducing the item, Rabbi Cooper stated that although the Internet represented a breakthrough for education, personal freedom of expression and global democratization, it was also a tool being utilized by small but committed groups seeking to promote agendas ranging from terrorism to racial violence and divisiveness. He focused on developments regarding extremist group activity on the Internet in North America, particularly in the United States which, firstly, had embraced the Internet more profoundly than any other country; about half of American adults were said to have access to the Internet. Secondly, while political extremism, xenophobia, racism and anti-Semitism had global manifestations, the largest number of identifiable white supremacist and neo-Nazi groups were in the United States.

60. Extremists embraced the various forms of communication offered by the Internet. Anonymously posted "spamming" via e-mail enabled bigots to launch on-line hate attacks - sometimes to tens of thousands of unsuspecting recipients - with little fear that they would be identified, let alone held accountable for their actions. On-line discussion or chat groups provided an opportunity to denigrate minorities, promote xenophobia and identify potential recruits. In addition, law enforcement organizations throughout the world had expressed deep concern that those elements of the Internet designed strictly for confidential communications were being utilized to promote illegal activities. Such tools as Encryption (encoding) and IRCs (on-line conferencing) could be used, for example, by terrorists to coordinate their activities.

61. Rabbi Cooper stated that the greatest level of activity by extremists that had been monitored on the Internet was found on the World Wide Web. By August 1996, the Simon Wiesenthal Center had identified over 200 problematic Web pages, currently classified in the following categories: nationalist/secessionist; explosive/anarchist/terrorist; neo-Nazi/White Supremacist; militias; Holocaust denial; conspiracy.

62. The World Wide Web provided many advantages to the extremist. Prior to the Internet, traditional modes of communication left the hate messenger and his message on the fringes of the mainstream culture. Today, the Internet provided hate mongers an inexpensive way to promote their "product" to a potential audience of tens of millions of people worldwide. In the past, limited funds meant that most extremists conveyed their messages through unattractive flyers, pamphlets or poor quality videos - not the type of material that would attract young people used to CDs and hi-tech games. The multimedia technologies currently available on Web pages insured that the "quality" of presentation and the "attractiveness" of hate and mayhem rivalled or surpassed any other high-tech presentation available to audiences. Furthermore, the interactivity of the Internet had led to the emergence of an "on-line subculture", where different sites promoted and reinforced agendas of hate, anarchy and terrorism.

63. In its attempts to find solutions to racial hatred purveyed on the Internet, the Simon Wiesenthal Center had contacted government authorities in Australia, Canada, Italy, Germany, the United Kingdom and the United States. In addition, it had significant contact with Internet Service Providers (ISPs) in the United States and Canada. The results of the contacts had been in general reflective of the prevailing confusion as to who was responsible for the posting of information on the Internet.

64. As a result, the main focus of the Wiesenthal Center had been the on-line community and service providers in North America. In that regard, reference was made to the prevailing laws of the United States. Many of the extremist groups relied upon the protection offered by the First Amendment of the United States Constitution as justification for their activities. The United States had a long tradition of interpreting freedom of speech in the broadest sense possible. Hence, it was unlikely that the United States would adopt any significant effective legislation vis-à-vis Internet postings, except in the areas of bomb-making and on-line criminal or terrorist activities.

65. Rabbi Cooper also stated that materials that were illegal in most other democratic countries, including those deemed dangerous, racist or defamatory under the laws of those countries, could be posted on the Internet in the United States, thereby becoming accessible to virtually everyone around the globe, regardless of national legislation.

66. The tradition in the United States was that the gatekeepers of communications and the media would exercise responsibility and restraint when presented with requests by avowed racists and extremists for unencumbered and unfiltered access to the public. Newspaper editors and radio and television station managers would therefore withhold information not because of any legislation but because of their understanding that their unique position

included special responsibilities toward the community. Thus, despite the protection afforded to racist and hate-inspiring speech by the First Amendment, it had been possible to marginalize such messages by limiting unfiltered access by broadcast and print media, both publicly funded as well as private. It would be difficult, for example, for the Ku Klux Klan to obtain broadcast time on American television to air a live cross-burning. With the advent of the Internet, however, and in particular the tools available via the World Wide Web, the established limits placed upon the American broadcast media no longer applied. Rather than 100 radio stations or 100 cable television channels, it had become possible to have literally millions of broadcast outlets, each having full access to broadcast media tools once available to a very limited élite.

67. Rabbi Cooper concluded that the challenges were daunting to those in the United States dedicated to maximizing free speech and marginalizing the agenda of bigots. For the rest of the world, the abuse of the Internet by those supporting terror, mayhem, racial violence, anti-Semitism and xenophobia presented an unprecedented challenge to existing anti-racist and anti-hate tradition and law - since much of the material emanated from foreign sources.

68. After his address, the expert gave a visual presentation of examples of Web sites which promoted racial hatred.

69. In the debate that followed, participants expressed concern about the danger of racist organizations operating on the World Wide Web. It was felt that the United Nations was responsible for ensuring that modern communications technologies were not used to spread racism. Studies should be initiated to determine what kind of technological solutions could be found to counter racist activities over the Net. Reference was made to techniques used in some countries where the Internet community had already devised some useful strategies to protect children from paedophiles and pornographic materials.

70. An international regime on computer-based transmission, as in the area of radio broadcasting, was felt to be necessary. An international approach would help overcome the problem posed by the differences in national legislations that made it possible for racist material to be produced in countries where there were no legal sanctions against incitement to racial hatred and made available through the Internet in countries where legal restrictions existed. A constructive dialogue should be initiated with Internet Service Providers, engineers, systems designers and others concerned, to convince them that a more humanistic approach to the Internet was needed. In the same vein, it was recalled that article 7 of the European Convention on Transfrontier Television Broadcasting requested broadcasters to ensure that their programmes did not include any incitement to racial hatred. It was also recalled that article 4, paragraphs (a) and (b), contained all the provisions on the basis of which States parties could take legal measures to prohibit organizations which were involved in racist propaganda over the Internet.

71. It was suggested that anti-racist organizations should get on the Internet and provide users, particularly young people, with accurate information on the dangers of racism and anti-Semitism so as to counter the influence of racist organizations. Education was an essential means to prevent young people from getting involved with racist organizations.

V. EFFECTS OF RESERVATIONS TO ARTICLE 4 ON THE FIGHT AGAINST RACISM AND RACIAL DISCRIMINATION

72. This agenda item was considered during working session IV on 11 September.

73. In the presentation of her background paper (HR/GENEVA/1996/SEM.1/BP.4), Mrs. Gowlland-Debbas focused on the nature and extent of reservations to article 4 of the Convention and discussed the issues raised by the need to find a balance between the protection of the rights to freedom of opinion, expression and association and the principle of non-discrimination. The effects of such reservations were assessed in the context of the fight against racial discrimination at the national level.

74. She pointed out the complex issues raised by article 4. Firstly, the provision obligates States to adopt immediate and positive measures including in the form of legislation. Secondly, it also obliges States to prevent racial discrimination when the immediate violation is by private individuals or bodies as opposed to officials or States. Thirdly, the provision raises the problem of the extent to which certain fundamental individual rights could be restricted in order to ensure protection from racial discrimination.

75. As a result, article 4 had attracted the greatest number of reservations and declarations, apart from article 22 of the Convention regarding the settlement of disputes. On 31 May 1993, 14 States of the 147 parties to the Convention had appended reservations and/or declarations to article 4, to which must be added the reservation by the United States to article 4 on its ratification of the Convention in 1994.

76. The concern of the Committee with respect to the effects such reservations or declarations might have on the adequate implementation of article 4 must be seen in the light of the growing importance of the issue of reservations to human rights treaties. This had been reflected in General Comment No. 24 (52) adopted by the Human Rights Committee, in the recommendations of the chairpersons of the human rights treaty bodies who had drawn the attention of States to the incompatibility of certain of their reservations with existing law, and in the attention devoted to this problem by the International Law Commission.

77. Mrs. Gowlland-Debbas identified the State parties which had made reservations or declarations to article 4 at the time of their ratification, accession or succession to the Convention: Antigua and Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, Fiji, France, Italy, Malta, Nepal, Papua New Guinea, Tonga, the United Kingdom and the United States. No objections had been raised by other States parties in that respect.

78. Reservations not specifically addressed to article 4 but which could have relevance in an interpretation of the obligations of States under that article included reservations of a general nature and those relating to article 22 on compulsory jurisdiction. Seven States had made reservations of a general nature subordinating the entire treaty to their constitutional or internal law. For example, that of Antigua and Barbuda provided: "Acceptance of the Convention by the Government of Antigua and Barbuda does not imply the

acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligations to introduce judicial processes beyond those provided in the Constitution". Similar reservations were made by the Bahamas, Barbados, Guyana, Jamaica, Nepal and Papua New Guinea.

79. Among the States making reservations to article 4, Nepal and the United States had also attached reservations to article 22 which would have the effect of excluding any compulsory submission to the jurisdiction of the International Court of Justice for settlement of disputes concerning interpretation of the reservations.

80. With regard to reservations to article 4, only one State had subordinated the whole of that article to its constitution and laws. A reservation made by the United States stated that: "The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States".

81. An Australian reservation to article 4 had been put forward as a temporary measure. Australia declared on ratification that it was not at that time in a position "specifically to treat as offences all the matters covered by article 4 (a) of the Convention (which would be) punishable only to the extent provided by the existing criminal law ...". However, it was the intention of the Government to seek from Parliament legislation specifically implementing the terms of that article. To date the reservation had not been withdrawn.

82. Some States had made reservations to article 4 which in effect left its implementation to their discretion. Antigua and Barbuda, the Bahamas, Barbados, Fiji, Malta, Nepal, Papua New Guinea, Tonga and the United Kingdom had interpreted article 4 as requiring a party to the Convention to enact additional measures or measures at variance with existing law and practice in the fields covered by subparagraphs (a), (b) and (c) of article 4 only where it considered, with due regard to the principles contained in the Universal Declaration of Human Rights and set out in article 5 of the Convention, that this was necessary for the attainment of the end specified in the article.

83. In declarations or statements of interpretation, Austria, the Bahamas, Belgium, Fiji, France, Italy, Tonga and the United Kingdom stated their understanding of the "due regard" clause of article 4, emphasizing that it was up to them as States parties to strike the proper balance between the rights guaranteed in article 5 and their other conventional obligations and the limitations to be imposed thereon by States parties under article 4 of the Convention. In substance, they interpreted article 4 as requiring a party to the Convention to adopt further legislative measures described in subparagraphs (a), (b) and (c) of that article only in so far as they were compatible with the right to freedom of opinion and expression and the right to peaceful assembly and association. Some made specific reference to the rights laid down in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and

Political Rights and which were stated in article 5 (d) (viii) and (ix) of the Convention. Italy referred in addition to article 29 (2) of the Universal Declaration of Human Rights, thus making express mention of the conditions under which the guarantee of freedom of opinion and peaceful assembly could be limited. Belgium expressly stated that in order to meet the requirements of article 4, it would take care to adapt its legislation to the obligations it had assumed on becoming a party to the Convention. It referred also to the need to take into account its obligations under the European Convention on Human Rights, in particular articles 10 and 11 dealing with freedom of opinion and expression and freedom of peaceful assembly and association.

84. In her assessment of the effects of reservations and interpretative statements on the fight against racial discrimination at the national level, Mrs. Gowlland-Debbas referred to the cases of the United States, the United Kingdom, France and Italy.

85. In the United States, several provisions of the Constitution had been relied upon by Congress and the courts in prohibiting racial discrimination, including the Thirteenth Amendment prohibiting slavery and the "equal protection clause" of the Fourteenth Amendment. However, although representatives of the United States Government had stated that they did not consider the reservations of the United States to be incompatible with the object and purpose of the Convention within the meaning of article 20 of the Convention, there were major limitations in United States law on the scope of implementation of article 4. In particular, prohibitions concerning advocacy and incitement were subject to the First Amendment to the Constitution in which opinions and speech were protected without regard to content. Certain types of speech, intended and likely to cause imminent violence, could be constitutionally restricted. The United States has stated that in light of its reservation to article 4, no new implementing legislation was considered necessary to give effect to the Convention, nor would its ratification have any foreseeable influence on future development of judicial interpretations of the Constitution, which had been reflected in the Supreme Court's decision in R.A.V. v. City of St. Paul (1992) overturning an ordinance punishing racist expressions.

86. In the United Kingdom, racial discrimination was dealt with specifically in selected fields of public life under the Race Relations Act 1976. New legislation was introduced in 1986, the Public Order Act 1986, which in Part III penalized conduct which was essentially incitement to racial hatred, in the form of words, display of any sign or visible representation, publication, broadcast, etc. The Public Order Act had also widened the scope of the offence of incitement to racial hatred so as to include conduct intended to, as well as conduct likely to incite racial hatred. This, however, might mean that racist material distributed to avowed racists could be prosecuted while racist abuse directed at the members of the hated racial group might not fall under the Act. Unlike other countries in Europe, the United Kingdom did not criminalize the expression of views which "merely" insulted or vilified racial groups except in certain very limited contexts, considering that the freedom to express opinions, however objectionable, must be protected so long as they did not lead to violence. The legal justification for restricting racist speech was the prevention of disorder. Penalties for offences under Part III included a maximum term of imprisonment

of two years and/or a fine. Although prosecutions had been relatively infrequent since the Public Order Act came into effect in 1987, the United Kingdom Government considered that Part III had had a deterrent effect.

87. Concerning racial violence, various kinds of conduct often engaged in by racists, including acts encouraging violence, were penalized under the Act as well as in other legislation, but with no mention of a racial motivation. This meant that the United Kingdom was not prepared to adopt specific legislation pursuant to article 4 to prevent incitement to racial violence as it did not feel it right to introduce a separate class of violent crime of racial motivation which would attract a greater penalty. The practical difficulties in proving racial motivation beyond reasonable doubt, the adequacy of existing arrangements whereby the activities of extremist or racist organizations had been dealt with under existing criminal laws, and the general power of the courts to take racial motivation into account as an aggravating feature within existing maximum penalties were also addressed. In the view of the Government, this proved a more effective and appropriate way of ensuring that perpetrators of racial violence were convicted and properly punished.

88. Concerning the requirements of article 4 (b), the participant from the United Kingdom argued that the Government had no power to ban individuals or organizations on the grounds that they held extreme racist views, nor did it plan to take such powers at present. He pointed to the United Kingdoms' long tradition of freedom of speech, allowing individuals to hold and express views which might well be contrary to those of the majority so long as those views were not expressed violently or did not incite violence or hatred against others. This included material produced by a number of avowedly racist groups such as the British National Party and other extremist groups. Such powers of proscription of organizations as existed in the United Kingdom were limited to groups involved with terrorism connected with Northern Ireland. To ban extremist organizations or to attempt to curtail their activities would be likely to have an adverse effect in acting as publicity for those groups which would run counter to the object and purpose of the Convention. Moreover, its legislation did not cover the mere fact of membership of such organizations but only the activities of members provided they committed criminal offences.

89. Members of CERD had considered that the United Kingdom's restrictive interpretation of article 4, though consistent with its earlier positions, was unsatisfactory from the standpoint of the Committee's General Recommendation XV and contrary to the object and purpose of the Convention. As a minimum measure, the United Kingdom should amend its interpretative statement and use objective terms which left open the possibility of an independent assessment of the margin of appreciation.

90. In the case of France, which had made an interpretative statement of the "due regard clause", the Committee had welcomed the new measures introduced to fight against racial discrimination and xenophobia, such as the establishment of new offences regarding crimes against humanity under the Act of 30 July 1990, the entry into force on 1 March 1994 of the new Penal Code, and the publication in 1992 of a report of the National Consultative Commission on Human Rights entitled "The struggle against racism and xenophobia", which revealed the seriousness with which France had addressed the question of its

obligations under the Convention. France was well equipped with anti-racist laws. The July 1972 law passed following its ratification of the Convention, and incorporated into both the Criminal Code and the Act of 1881 on the freedom of the press, formed the basis of this body of law and was subsequently completed by a series of additional Acts.

91. While freedom of expression was constitutionally guaranteed, abuse was penally sanctioned by the July 1881 Law on freedom of the press. Offences covered all public expressions of incitement to discrimination, hatred or violence on grounds of racial or religious origin. Penalties differed according to whether the offence was characterized as defamation (based on precise facts) or insult, including a new offence of non-public racial provocation (for example in a letter). Other new offences included questioning the existence of crimes against humanity, distribution of racist publications to minors, banning of the manufacture and distribution of racist and xenophobic propaganda material such as uniforms, insignias or emblems (except for a film, play or historical exhibition). The penalties had been increased for racially motivated desecration of bodies and graves (up to five years' imprisonment).

92. The 1972 law provides for the dissolution by presidential decree of organizations, associations or groups inciting to racial discrimination, hatred or violence or disseminating such ideas. The new Penal Code had made this a criminal offence. Reconstitution of groups which had been dissolved was punishable by up to seven years' imprisonment for the leaders of such organizations or groups, or in the case of armed combat groups. Several right-wing organizations had been dissolved under this law. France had also introduced new rights for associations fighting against racism.

93. The Committee observed that in practice, Italy had abandoned its reservations to the Convention and had instituted a procedure for their formal withdrawal. Italy had no general legislation to counter racial or ethnic discrimination, but non-discrimination was covered by article 3 of its Constitution and by its criminal legislation. Nevertheless, it had had to contend with a rise in racial violence, intolerance and xenophobia. Consequently, in 1993 it introduced new legislation - Decree-Law No. 122 of 26 April 1993 - containing special provisions concerning propaganda to promote racial discrimination or hatred. The Decree-Law amended in part the 1975 Act which, in the implementation of article 4 of the Convention, had introduced the specific offences covered by subparagraphs (a) and (b). Italian law had expanded the term "racial discrimination" to cover incitement to violence and provocation of violence not only on racial but also on ethnic grounds. New criminal offences had been introduced: the dissemination of ideas rooted in racial superiority, external or ostentatious displaying of symbols of racist organizations and the gaining of access to sports events with such symbols. Additional penalties had also been introduced for offences committed with racist motivation. The courts now had the power to impose community service on offenders.

94. Italian legislation had widened the ban on racist organizations and associations to include groups and movements, and the dissolution of such groups and the confiscation of their property in some cases. The mere fact of participating in or assisting a racist organization was punished by up to five

years' imprisonment, with higher penalties applicable to the leaders and promoters of such organizations or groups. Penalties were increased (up to seven years' imprisonment) if the aim of the group included incitement to violence. A number of organizations linked with the Fascist ideology had been banned under a 1952 law, but more recently the ban was extended to include extreme right-wing or skinhead groups.

95. The examples of France and Italy demonstrated that in confronting the rise of xenophobia and racism, there had been an evolution in the interpretation of the "due regard" clause by States, reflecting a growing awareness of the need to reassess the balance between the right to be protected from racial discrimination and the freedoms of expression and association.

96. In the ensuing discussion, a participant sought clarification about the time-limit in which the Committee could assess the reservations made by a State party to the Convention. The expert explained that whereas States parties, in accordance with article 20, were bound by the Convention to object to reservations within 90 days from the date of notification, ratification or accession, the Committee could assess reservations at any time. That allowed the Committee to take into account the evolution of the situation in a given country before pronouncing on whether the country was fulfilling its obligations under the Convention. However, views expressed by the Committee were not binding.

97. Several participants emphasized that some reservations on article 4 were clearly incompatible with the object and purpose of the Convention. While recognizing that only the States parties were masters of the Convention and only their interpretation of the provisions of the Convention were binding, they asked whether the recommendations of the Committee could have some legal or even political effects which might contribute to a better implementation of the Convention, or would they remain purely declaratory. It was said that States parties could be confused by the contradictions and discrepancies in the advice emanating from different treaty bodies and mechanisms on similar issues. Some coordination among the committees was felt to be necessary. Finally, it was noted that reservations or interpretative statements made by a number of States parties had not always been detrimental in practice to the spirit of the Convention.

98. It was observed that in the present context of globalization of problems, the question of reservations had taken on a new dimension. Reservations made by a country under article 4 affected not only its own nationals, but could also have a spill-over effect. Some participants expressed the view that reservations to provisions of human rights treaties incorporating norms of jus cogens were prohibited, whether or not they were contrary to the object and purposes of the Convention; others felt that such a prohibition depended on the provisions of each treaty. In accordance with the views of the Special Rapporteur of the International Law Commission contained in his second report on reservations to treaties, it was stated that human rights treaties were not different with regard to the question of reservations. The regime of the Vienna Convention on the Law of Treaties

would apply in cases where the human rights treaty was silent on reservations. In addition, it was noted that reservations' provisions varied from one human rights instrument to another.

99. Whether the Vienna Convention should be the only reference in case of silence of a human rights treaty or whether the evolution of international law should also be taken into account was a matter for debate. Reference should be made to all relevant rules of international law, including those incorporating the modern vision of human rights treaties which were specific in their nature and included norms of jus cogens. The opinion expressed by treaty monitoring bodies should also be referred to.

100. With regard to the fact that the rules on reservations to multilateral treaties had been elaborated with the purpose of reconciling two sets of interests (the need to ensure the universality of a treaty by maximizing participation by States with diverse cultural, economic and political conditions, and the need to preserve the integrity of the treaty), it became evident that universality should not only be numerical but also substantive. What emerged from the tendency of States parties to make reservations to human rights treaties was the spectrum of cultural relativism which nullified the objectives, aims and goals of human rights treaties. The fact is that the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women had been ratified by numerous States, but with substantial reservations which limited the scope of their implementation. In that context, it was recalled that the Vienna Declaration and Programme of Action provided that in case of conflicts between international human rights standards and the customs and practices of a State reflected in its reservations, human rights norms should take precedence.

VI. EFFECTIVENESS OF RECOURSE PROCEDURES AVAILABLE TO VICTIMS OF RACISM AND RACIAL DISCRIMINATION

101. This item was considered during working session V, on 11 September 1996. It was introduced by Mr. Gérard Fellous.

102. In his introductory statement, drawing on the background paper he had prepared for the seminar (HR/GENEVA/1996/SEM.1/BP.5), Mr. Fellous highlighted, inter alia, the various types of protection offered to victims of racial discrimination and the remedies available to them. He analysed the constitutional, legislative and administrative forms of protection to be found in various countries.

103. He indicated that a large number of European countries had, to a greater or lesser extent, included anti-discriminatory provisions in their constitutions. Belgium, Denmark, Finland, France, Germany and Italy were cited as examples.

104. He showed, by means of a comparative study, the disparities between anti-racism legislation guaranteeing the protection of victims in countries of the European Union. Some countries, among them France, had chosen to protect

individuals essentially by applying of the principle of equality; others, like the United Kingdom, combated discrimination by protecting minorities as such.

105. Juridical means of combating racism varied both in form and in content. There were appreciable differences in the type of protection afforded: some countries had opted for civil proceedings, others for criminal proceedings.

106. Thus, the United Kingdom, which had long-standing and extensive legislation concerning racial discrimination, based protection on civil proceedings. That choice was justified by the fact that the procedure was more straightforward, particularly with regard to the burden of proof. In matters of employment, public- and private-sector housing, education and provision of goods and services, United Kingdom legislation gave injured parties the right of direct recourse to the civil courts and to the industrial tribunals, i.e. special labour courts. Only incitement to racial hatred constituted a criminal offence. The United Kingdom was the most extreme example, but many European States combined the two approaches. One could also cite Germany, which, in matters concerning the right to work, afforded protection based on civil law.

107. Other European countries had for the most part chosen the criminal law approach, either passing a specific act (Belgium) or including special articles on racist offences in the Penal Code.

108. A second disparity related to the ground covered by anti-racism provisions, which was broader in some cases than in others: some European countries had a veritable arsenal of legislation (Belgium, France), while others managed with a few special provisions supplemented by general rules on equality and non-discrimination (Denmark) and/or applied the concept of "racist motivation" in sentencing for acts already punishable under criminal law. In Germany, for example, murder motivated by racial hatred could attract a sentence of life imprisonment, whereas the minimum penalty for voluntary manslaughter was five years.

109. The main areas concerned by European legislation generally were employment, the supply of goods and services, housing and racist speech.

110. The sphere of operation of anti-racism legislation also varied. The ban on discrimination might concern only the State, as in the case of the Netherlands, or encompass relations between private individuals, as provided for in Portuguese law. Some countries opted for mixed operation, which in the United Kingdom, for example, as regards goods and services, meant that the Race Relations Act did not apply to clubs and associations with less than 20 members.

111. Faced with the resurgence of nationalism, racism and xenophobia, the European Union countries had responded by enacting new laws. Thus, in 1993 Italy had strengthened its legislation, particularly concerning the dissemination of racist ideas. Sweden had enacted a new law in 1994 to counter ethnic discrimination in the field of employment. Belgium had changed its anti-racism law in 1994. Other European countries were considering proposals to supplement and strengthen their legislation.

112. Examining in more detail the state of the law in France, which was well equipped to counter racism and discrimination, Mr. Fellous singled out, on the one hand, the provisions included in the Penal Code (arts. 225-1 and 225-2) and, on the other, offences under the law on the press (law of 1881, strengthened by the laws of 1972 and 1992).

113. Concerning the criminal law, the new Penal Code had introduced provisions relating to crimes against humanity. It appeared from those provisions that racism was not, as a general rule, regarded as an aggravating circumstance in the French Penal Code. Except for the desecration of graves, for which it was presented as an aggravating circumstance, racism was not taken into account as such, at least not directly. The French Penal Code therefore recognized only one charge, i.e. discrimination as defined in article 225-1, which referred to "any discrimination against natural persons on account of their actual or supposed membership or non-membership of a particular ethnic group, nation, race or religion". Article 225-2 criminalized certain types of conduct or refusal to perform acts consistent with that definition. Such forms of conduct were limitatively enumerated by the law and consisted in refusing or attaching conditions to the supply of a good or service, refusing to recruit or attaching conditions to recruitment, sanctioning or dismissing a person, and interfering with the normal exercise of an economic activity.

114. Regarding the legislative provisions aimed at combating the expression of racism and xenophobia, the law of 1 July 1972 strengthened the 1881 law on the press by creating an offence of provocation of violence, hatred and racial discrimination.

115. Besides legislative protection, Mr. Fellous, again taking the case of France, pointed out that the juridical arsenal to counter discrimination involved not only criminal prosecution. The tribunal de grande instance could pronounce the dissolution of an association, order the closure of its premises and prohibit any meeting of its members. The annulment of the object of an association and judicial dissolution could be effective responses.

116. In the discussion following the statement by Mr. Fellous, several participants outlined the various constitutional and legislative provisions prohibiting racism and racial discrimination in their respective countries and the remedies available for victims of racial discrimination.

117. Some participants focused in their statements on the limitations of penal measures to combat racism and racial discrimination. It was felt that in several countries, particularly in Europe, manifestations of racism and racial discrimination were becoming more widespread, despite the existing laws. That might be linked to the activities of racist organizations and political parties which, by entering political life and gaining representation in parliaments, had acquired some legitimacy. It was noted that racist organizations knew how to circumvent the laws against racism, for example, by employing language that was not directly covered by the law yet was, in fact, racist or xenophobic. As racism was commonplace in several countries, it was felt that the laws should be strengthened and that preventive measures, particularly in the field of education, should be taken.

118. A participant stressed that racism was not merely a European problem and was manifested on all continents, notably through ethnic conflicts.

119. It was pointed out that racism and racial discrimination were difficult to combat because they were fostered by thousands of acts that did not necessarily lead to complaints. Thus, in most countries, there was a large discrepancy between the number of cases reported to non-judicial entities such as non-governmental organizations and the complaints received by the police and the courts.

120. Some speakers wondered whether the penalties applicable to racist acts were not too weak, therefore doing little to discourage racism. It was indicated that, in some countries, financial sanctions were a deterrent. It was suggested that alternative penalties aimed at educating the perpetrators of acts of racial discrimination should be imposed instead of imprisonment. As in some countries, community service orders could achieve that end.

VII. CONCLUSIONS AND RECOMMENDATIONS

121. Conclusions and recommendations were considered during working sessions VI and VII on 12 September 1996. The seminar had before it the following documents:

(a) A draft prepared by the Secretariat;

(b) A proposal by the participant from Ethiopia;

(c) A proposal by a participant from the Russian Federation;

(d) A proposal by the participant from Mauritius;

(e) A proposal by the representative of the Finnish League for Human Rights.

122. The final text of the conclusions and recommandations adopted by the seminar is contained in annex II.

123. The participants from the United Kingdom and Japan stated that they were pleased to have attended the seminar. They considered the discussions to have been interesting and useful. However, they wished to place on record that, although they had participated in the seminar, the Governments of Japan and the United Kingdom did not necessarily agree to, or support all the conclusions and recommendations contained in the report of the seminar.

VII. CLOSING SESSION

124. Concluding remarks were made by the Chairperson, Mrs. Gowlland-Debbas (see annex III).

125. A closing statement was made by Mr. Rechetov who expressed the hope that the seminar would contribute to better implementation of the International Convention on the Elimination of All Forms of Racial Discimination.

126. A statement was made on behalf of the High Commissioner by the chief of the Prevention of Discrimination Section of the Centre for Human Rights who stressed that the fight against the evils of racism and racial discrimination and related intolerance was at the forefront of the Centre's preoccupations and of other competent bodies of the United Nations system. The focus of the overall action against racism in the United Nations was the Third Decade to Combat Racism and Racial Discrimination, which had provided the framework for the seminar. It was a mandate to which the United Nations attached the highest importance. The subject of the seminar was of great interest to the entire international community, developing and developed countries alike.

Annex I

LIST OF PARTICIPANTS

Experts

Vera Gowlland-Debbas
Acting Professor, Graduate Institute of International Studies
Geneva

Iouri A. Rechetov
member, Committee on the Elimination of Racial Discrimination (CERD)

Luis Valencia Rodríguez
member, CERD

Rabbi Abraham Cooper
Dean, Simon Wiesenthal Center
Los Angeles, United States of Amercia

Gérard Fellous
Secretary-General
National Consultative Commission on Human Rights
France

Individuals nomiated by their Governments

Angola	Mr. Mario Constantino
Argentina	Mr. Juan José Echegoyen
Bolivia	Mr. Jaime Quispe
Brazil	Mr. Antonio Luis E. Salgado
Canada	Mr. Peter Splinter
Croatia	Mr. Miroslav Papa
Cuba	Ms. Aymée Herdández-Quesada
Ethiopia	Mr. Minelik Alemu Getahun
France	Ms. Marion Paradas Bouveau Mr. Frédéric Fevre
Gabon	Mr. Corentin Hervo-Akendengue
Greece	Mr. Linos-Alexandre Sicilianos
Germany	Mr. Richard Blath Mr. Christian Hellbach

Honduras	Mrs. Gracibel Bu Figueroa
Hungary	Mr. Janos Balogh I.
India	Mr. Venu Rajamony
Iran (Islamic Republic of)	Mr. Ali-Reza Ghanavi Mr. Jafar Oulia
Japan	Ms. Masako Kinoshita
Jordan	Mr. Jafar Hassan
Kuwait	Mr. Salah Mohammed Al-Buaijan
Malaysia	Mr. Raja Nushirwan Z. Abidin
Mauritius	Mr. Dhaneswar Pursem Mr. Ah-yad Lam
Mexico	Mr. Ricardo Cámara
Morocco	Mr. Abdelkebir Zeroual Mr. Mohamed Maidi
Norway	Mr. Petter Wille
Pakistan	Mrs. Tehmina Janjua Mr. M. Syrus Qazi
Poland	Mrs. Agnieszka Dabrowiecka
Russian Federation	Mr. Alexei Rogov Mr. Serguei Tchoumarev
Senegal	Mr. Abdou Aziz Ndiaye
Slovakia	Mrs. Barbara Tuhovcakova
South Africa	Mrs. Renuka Naiker
Sweden	Ms. Anne Dismor
Switzerland	Mrs. Boël Sambuc Mrs. Doris Angst Yilmaz
The Former Yugoslav Republic of Macedonia	Ms. Miriana Najcevska
Ukraine	Mr. Yevhen Semashko
United Kingdom of Great Britain and Northern Ireland	Mr. Paul Bentall

Viet Nam	Mr. Bui Quang Minh
Zambia	Mrs. Eva Jhala Ms. Elita Mwikisa

Intergovernmental organizations

ORGANISATION ARABE DU TRAVAIL	Mr. Rasoul Bakr Mr. Adnan El-Telawi

Other organizations

INTERNATIONAL COMMITTEE OF THE RED CROSS	Ms. Dominique Borel Ms. Estelle Prelat

Human Rights Institutes

INSTITUT D'ETUDES POLITIQUES DE GRENOBLE	Ms. Alexandra Gorin Mr. Jamaël Neyme

Non-governmental organizations

ANTI-RACISM INFORMATION SERVICE	Ms. Irene McClure
ASSOCIATION INTERNATIONALE POUR LA DEFENSE DE LA LIBERTE RELIGIEUSE	Mr. Maurice Verfaillie
ASSOCIATION ROMANDE CONTRE LE RACISME	Mr. Karl Grünberg
CARITAS INTERNATIONALIS	Mr. Marcel Furic
CONFERENCE OF EUROPEAN CHURCHES	Ms. Muriel Beck Kadima
ESPACE AFROAMERICAN	Ms. Mercedes Moya
FINNISH LEAGUE FOR HUMAN RIGHTS	Mr. Juhani Kortteinen
HUMAN RIGHTS INFORMATION AND DOCUMENTATION SYSTEM INTERNATIONAL	Mr. Manuel Guzman Mr. Bert Verstappen
INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM	Ms. Atsuko Tanaka
LIGUE INTERNATIONALE CONTRE LE RACISME ET L'ANTISEMITISME	Mr. Philippe Grumbach Mrs. Claire Luchetta-Rentchnik Mrs. Birgit Sambeth-Glassner
WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM	Ms. Geneviève Jourdan

Annex II

CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE SEMINAR

I. CONCLUSIONS

1. The participants note with great concern that despite the efforts undertaken by the international community at various levels, racism, racial discrimination, xenophobia, ethnic antagonism and acts of violence resulting therefrom are on the increase. They also note with concern that technological developments in the field of communication, including computer networks such as the Internet, can potentially be used for dissemination of racist, anti-Semitic and xenophobic propaganda all over the world. The main victims of this trend are racial, ethnic, national, linguistic and religious minorities, migrant workers, foreigners and indigenous populations.

2. The seminar recognizes that it is vital that States Members of the United Nations promote awareness among the population of the threat posed to the stability of the national and international order by the propagation of ethnic hatred, ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, as well as racist propaganda and activities.

3. The seminar underlines the continuing relevance and great importance of the International Convention on the Elimination of All Forms of Racial Discrimination and recognizes that the ratification of the Convention by 147 States is a positive step towards the elimination of racial discrimination. It acknowledges the important role played by the Committee on the Elimination of Racial Discrimination (CERD) in that regard through its continuous efforts in collaborating with States parties to assist them in complying with their obligations under the Convention. However, the seminar observes that quite apart from the failure by some States parties to implement the provisions of the Convention, the effective implementation of article 4 may have been hindered by the reservations made by several States parties. The limited number of States parties which have made the declaration under article 14 to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals within their jurisdiction claiming to be victims of racial discrimination has also been identified as an obstacle to the effective discharge by the Committee of its functions.

4. The seminar, in line with CERD recommendation XV on article 4 (42) of 1993, considers that the prohibition of the dissemination of ideas based on racial superiority or racial hatred can be a lawful restriction to the rights to freedoms of opinion, expression and association as set forth in the Universal Declaration of Human Rights and article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

5. The Seminar recognizes that the new manifestations of ethnic antagonism and the contemporary phenomenon of xenophobia are increasingly relevant to the work of CERD.

II. RECOMMENDATIONS

Committee on the Elimination of Racial Discrimination: implementation of the Convention

1. States parties should provide more effective support to and assure a greater cooperation with CERD to enable it better to discharge its functions. They should comply with their reporting duties under the Convention.

2. States parties which have not yet done so should adopt legislative and all other appropriate measures to give full effects to their obligations under article 4 (a) and (b), which calls for the adoption of immediate and positive measures with a view to eradicating all incitement to racial hatred and prohibiting organizations involved in such activities.

3. The seminar recalls that it is provided in the 1993 Vienna Declaration and Programme of Action that "(t)he World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights intruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them". It calls upon States parties to the International Convention on the Elimination of All Forms of Racial Discrimination which have made reservations to the Convention, particularly those which impact on articles 4 and 6, to regularly review them in the light of changing circumstances with a view to withdrawing them.

4. States parties which have not yet done so should consider making the declaration under article 14 of the Convention by which they recognize the competence of the Committee on the Elimination of Racial Discrimination.

5. States parties are requested to undertake a systematic review of their national jurisprudence on racism and incitement to racist violence and to include in their reports to the Committee relevant indictments and trials under their existing laws.

6. Effective recourse to fair and adequate procedures should be made available to victims of racism and racial discrimination. These procedures should be made easily accessible. Victims of racism and racial discrimination should receive just and adequate reparation or satisfaction for the prejudice suffered.

Mass media

7. The seminar notes with concern that although the mass media can play an important role in combating racism and racial discrimination, at times they may contribute to the dissemination of racist ideas and incitement to acts of violence. Therefore, it encourages the mass media to promote ideas of tolerance and understanding among different populations, inter alia on the basis of professional ethics.

Computer networks-Internet

8. The United Nations, in particular its Legal Office, and other international and regional organizations should undertake a systematic review of existing international instruments, with the view to their applicability/adaptability to the parallel forms of communication on the Internet.

9. The seminar recommends that a seminar be organized by the Centre for Human Rights in cooperation with the Committee on the Elimination of Racial Discrimination, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union and other relevant United Nations agencies, non-governmental orgaizations and Internet Service Providers, with a view to assessing the role of the Internet and to suggesting ways and means for its responsible use in the light of the implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

10. The United Nations Centre for Human Rights should use the existing presence of the United Nations on the World Wide Web as a means of generating awareness of the problem of racism and racial discrimination.

Education

11. The seminar strongly underlines the importance of education as a significant means of preventing and eradicating racism and racial discrimination and of creating awareness of human rights principles, particularly among young people, and recommends that States parties take measures in that regard.

Role of non-governmental organizations

12. The seminar commends non-governmental organizations for their action against racism and racial discrimination and for their continuous support and assistance to the victims of racism and racial discrimination. States are encouraged to take into account the views of NGOs in seeking solutions to human rights problems.

13. NGOs are encouraged to participate more actively in the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination.

Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination

14. The seminar regrets the lack of interest and support for the Third Decade and its Programme of Action under which, since its adoption by the General Assembly in 1993, the Centre for Human Rights has been able to organize only the present seminar. It calls upon Member States to contribute generously to the Trust Fund for the Programme of Action for the Decade.

15. The Centre for Human Rights should continue to play a key role within the United Nations system in all activities aiming at combating racism and racial discrimination.

Annex III

CONCLUDING REMARKS BY THE CHAIRPERSON, MRS. VERA GOWLLAND-DEBBAS

This seminar has been a very important one in marking the Third Decade to Combat Racism and Racial Discrimination proclaimed by the General Assembly in 1993. The object of the seminar was to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, with particular reference to articles 4 and 6, and to analyse the difficulties facing such implementation, particularly in the light of new international parameters.

The seminar highlighted certain new developments which have made such a reassessment highly necessary and topical:

(a) Renewed manifestations of racism and ethnic conflict, the resulting devastation with which in Europe and Africa we have all recently become too familiar. But also an extremely worrying rise, in countries which have long considered themselves to be the hallmarks of democracy, of neo-Nazi activities and xenophobic tendencies directed against elements of the foreign and migrant populations, as well as against refugees who have fled from persecution in their own lands;

(b) A growing indifference towards and tolerance of racist speech leading to the support by fringe populations of political parties conveying messages of racial superiority and incitement to racial hatred;

(c) New technological developments such as the Internet, a powerful educational tool, but which is being used to promote the purposes of racist individuals and organizations and to transmit racist messages.

These developments pose a challenge to the very pillars of our democratic institutions - political pluralism, freedom of opinion and expression, and freedom of association - by their subversion at the hands of individuals or groups of individuals whose avowed purpose is to negate these very institutions.

Hence the renewed relevance of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination with its preventive measures and article 6 with its remedial measures. Article 4 aims to nip the danger in the bud, so to speak - to ensure that what at the outset may appear to be "mere" expressions of racial insult, the dissemination of ideas based on racial superiority or hatred, does not degenerate. We have seen the extreme forms of this snowball effect in Europe and Africa, where the use made by political leaders of the media to propagate not only racist ideas but incitement to acts of racial and ethnic violence has led to ethnic cleansing and genocide. Article 6 underlines the obligations of States to ensure protection and provide remedial measures to all individuals within their jurisdiction.

The speakers at the Seminar pointed to some difficulties in the way of implementing these articles.

The two members of CERD, Mr. Iouri A. Rechetov and Mr. Luis Valencia Rodríguez, referred to the difficulties faced by the Committee in carrying out

its task of monitoring compliance by States - whether in the fields of submission and consideration of States parties' reports, the provision at national level of protection and effective remedies to individuals, reservations by States, or the optional provisions of article 14 concerning individual communications.

Mr. Gérard Fellous, Secretary-General of the Commission nationale consultative des droits de l'homme of France, underlined the problems facing States in implementing international obligations at the national level. This raises the age-old problem of the relationship between international and domestic law and points to the wide disparities existing between national cultural traditions and laws.

Rabbi Abraham Cooper of the Simon Wiesenthal Center in Los Angeles illustrated the unprecedented challenges facing Governments in legislating for and otherwise regulating a means of communication to which the known and accepted limits placed upon the traditional media do not apply. The proliferation and sometimes anonymity of the sources of the Internet, its global outreach and particular appeal to young and susceptible populations contain great potential for the dissemination of racist ideas and racial hatred worldwide. It also leads to the widening of the techological gap between developed and developing countries.

My presentation focused on the effects of reservations in the context of article 4 of the Convention. Reservations to treaties continue to be considered the prerogative of State sovereignty. Nevertheless, the legal institution of reservations may well have to be reassessed in the light of the particular nature of human rights treaties; this results from their specific object, which is to provide maximum protection for individuals victimized not only by their own Governments but also at the hands of private parties, from their recognition in international and regional jurisprudence as establishing non-reciprocal and objective obligations, and from the existence of treaty monitoring bodies. I also underlined the compatiblity between the obligations of States under article 4 and the rights to freedom of expression and association consecrated by the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments, particularly where these limits are to be found in the rights and reputations of others.

I would like to conclude by underlining the fact that we are at the threshold of a world marked by profound changes in international relations. In the face of reassertion of ethnic - some may call it tribal - identities, of revival of neo-liberal ideas based on extreme individualism and deregulation, as well as of other centrifugal forces, it becomes imperative at the international level to insist on general, as opposed to particular, State interests and to work towards the development of a "public order of the international community". I would like to mention three significant developments in contemporary international law which point in this direction.

First, the purposes and principles of the Charter of the United Nations have come to reflect the global values of the international community. These represent a move away from the traditional bilateralism and voluntarism which characterized traditional international law, to a legal system which now reflects a hierarchy of norms. We have come to recognize the existence of a core of norms directed to the protection of certain overriding universal

values which are considered to be fundamental to the international community as a whole and the non-observance of which would affect the very essence of the international legal system. These norms have been assigned different purposes: to maintain some semblance of an international public order based on the need for stability; to ensure peaceful transformation of that order based on notions of justice; to preserve a certain universal moral foundation based on a minimum core of humanitarian or ethical norms or, more basically, to ensure the physical protection or very survival of mankind.

Amongst these wide-ranging norms are the basic principles of human rights of which non-discrimination cited in the Charter forms the cornerstone. The prohibition of racial discrimination is now accepted as a norm of jus cogens, consecrated in articles 53 and 64 of the 1969 Vienna Convention on the Law of Treaties. The International Court of Justice has referred to the prohibition of racial discrimination as an erga omnes obligation owed to the international community as a whole. Article 19 of Part 1 of the International Law Commission's draft articles on State responsibility has introduced the notion of international crime resulting, inter alia, from a serious breach of an obligation of essential importance for safeguarding the human being, such as apartheid.

Second is the emergence of non-State entities as new and important subjects of international law which has transformed the nature of international disputes. The United Nations has encouraged the rights of these entities, but recently it has also held them accountable under international law. We have seen the establishment of two tribunals to judge individual crimes committed during armed conflicts which exploded out of ethnic hatred. The General Assembly is about to consider a proposal for the establishment of a permanent international criminal court.

Third, there has been a reconceptualization of threats to the peace. Serious violations of such fundamental norms of international law have come to be determined by the Security Council to constitute the main threats to international peace and security opening the way to the imposition of sanctions under Chapter VII of the Charter. In this way there has been a shift in Charter priorities. In 1945 it was usual to distinguish between the primary function of the United Nations to maintain peace, which included peaceful settlement of disputes and enforcement action, and the secondary one of peace-building - the longer-term development of conditions conducive to peace, which included the promotion of human rights. Today, these peace-building measures have shifted focus and are now part of the peace-maintenance function itself.

Viewed in the light of these contemporary international law developments, the focus of our seminar has been an important and timely one. In our world of interdependency and in the light of the vital need to protect a core of fundamental norms of international law, States can no longer afford to retrench behind traditional notions of sovereignty, concepts of cultural relativism, disparities in national legislation and independence of national courts to plead non-implementation of international obligations, particularly where these are aimed at protection of the individual.